

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 24, 2007

JAMES EDWARD MITCHELL v. STATE OF TENNESSEE

Appeal from the Criminal Court for Davidson County
No. 2000-C-1549 Seth Norman, Judge

No. M2007-00423-CCA-R3-PC - Filed April 10, 2008

The petitioner, James Edward Mitchell, appeals the Davidson County Criminal Court's dismissal of his petition for post-conviction relief pursuant to the Post-Conviction DNA Analysis Act of 2001. He contends the trial court erred in denying relief because (1) the DNA test results proved his innocence; (2) the state failed to file a timely response to the petition; and (3) the trial court did not appoint counsel and allow the petitioner to amend his petition. We affirm the trial court's dismissal of the petition.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and J.C. McLIN, JJ., joined.

James Edward Mitchell, Nashville, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; Dan Hamm, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

According to the record, the petitioner was charged in 2000 with first degree premeditated murder, first degree felony murder, and especially aggravated robbery. He pled guilty to second degree murder, and judgment was entered on September 7, 2001, sentencing him to serve nineteen years at one hundred percent. He filed his post-conviction petition on December 14, 2006, in which he alleged that he was entitled to relief under the Post-Conviction DNA Analysis Act of 2001 because the state "withheld/concealed" exculpatory DNA test results before entry of his guilty plea. After the petition was filed, the state filed with the trial court a DNA test results report which reflects that all substances tested were either identified as containing the DNA of the victim or were not able to be tested successfully due to insufficient or degraded DNA. The trial court did not appoint counsel. The trial court entered an order finding that the DNA test results report did not contain

evidence which would potentially exonerate the petitioner and that there was not a reasonable probability that the petitioner would not have been prosecuted or convicted based upon the results. The trial court denied relief.

The Act provides that a person convicted of certain enumerated crimes, including second degree murder

may at any time, file a petition requesting the forensic DNA analysis of any evidence that is in the possession or control of the prosecution, law enforcement, laboratory, or court, and that is related to the investigation or prosecution that resulted in the judgment of conviction and that may contain biological evidence.

T.C.A. § 40-30-303. DNA analysis is required if the trial court determines:

(1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis;

(2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;

(3) The evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and

(4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

T.C.A. § 40-30-304; see T.C.A. § 40-30-305.

Upon review, we hold that the trial court did not err in dismissing the petitioner's claim. The petitioner has not established a reasonable probability that he would not have been prosecuted or convicted, and he has not requested any new testing of the evidence which could resolve an issue not resolved by the previous analysis. Further, the Act does not provide that the remedy for an untimely response by the state is a grant of relief to the petitioner, and the Act does not require that counsel be appointed and amendment of petitions allowed. See T.C.A. § 40-30-307 (providing that counsel "may" be appointed).

We note, as well, that to the extent the petitioner's allegations pertain to complaints about the effective assistance of counsel, an unknowing and involuntary guilty plea, and suppression of evidence by the state in violation of Brady v. Maryland, 373 U.S. 83 (1963), these claims are

untimely under the one-year statute of limitations for non-DNA post-conviction claims. See T.C.A. § 40-30-102(a). Moreover, he has not alleged any facts which, if proven, would entitle him to tolling of the statute of limitations. See T.C.A. § 40-30-102(b); Williams v. State, 44 S.W.3d 464, 470-71 (Tenn. 2001) (noting that due process may allow for tolling of post-conviction statute of limitations).

In consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

JOSEPH M. TIPTON, PRESIDING JUDGE